

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, DC 20554

AUG - 8 2003

In the Matter of

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

Amendment of Section 73.202(b)	)	
Table of Allotments	)	MM Docket No. 00-148
FM Broadcast Stations.	)	RM - 9939
(Quanah, Archer City, Converse, Flatonia,	)	RM - 10198
Georgetown, Ingram, Keller, Knox City,	)	
Lakeway, Lago Vista, Llano, McQueeney,	)	
Nolanville, San Antonio, Seymour, Waco and	)	
Wellington, Texas, and Ardmore, Durant,	)	
Elk City, Healdton, Lawton and Purcell,	)	
Oklahoma.)	)	

To: Chief, Audio Division  
 Media Bureau

**REPLY TO OPPOSITIONS TO PARTIAL PETITION FOR RECONSIDERATION**

Rawhide Radio, LLC, Capstar TX Limited Partnership and Clear Channel Broadcasting Licenses, Inc. ("Joint Petitioners"), by their respective counsel, hereby reply to the "Opposition" filed by Charles Crawford ("Crawford") on June 30, 2003 and the "Joint Opposition" filed by M&M Broadcasters, Ltd. and Fritz Broadcasting Co., Inc. ("M&M/Fritz") on July 1, 2003.<sup>1</sup> As will be shown, the oppositions are based on faulty premises, mischaracterizations and rampant speculation. They ignore the public interest and should be rejected. In support, the Joint Petitioners state as follows:

1. The Report and Order in this proceeding, DA 03-1533 (released May 8, 2003), dismissed, inter alia, the Joint Petitioners' proposal due to its failure to conflict with the original proposal set forth in the Notice of Proposed Rule Making ("NPRM"), 15 FCC Rcd 15809 (2000). No reason was given for the outright dismissal when the Commission could have issued

<sup>1</sup> This reply is timely filed in response to the Public Notice released July 7, 2003, Report No. 2616 and published in the Federal Register on July 14, 2003 Section 1.429(f) of the Commission's Rules.

a separate NPRM instead. In effect, the FCC is insisting that the Joint Petitioners file a new Petition for Rule Making.

2. Crawford argues that the Commission was correct in dismissing the proposal because the Joint Petitioners cannot have their proposal granted without considering all of the intervening petitions (listed in the Petition for Partial Reconsideration at Exhibit A) which in some cases were already granted. Crawford bases its argument on various procedural grounds, citing the Administrative Procedure Act. Crawford complains, as he has in the past, that the Joint Petitioners' proposal was too lengthy, complicated and far-reaching to have adequately given notice to parties interested in filing counterproposals. However, as will be shown, most of these arguments are irrelevant to the Joint Petitioners proposal as it is now offered.

3. Similarly, M&M/Fritz argue that the Joint Petitioners cannot file as part of a larger proposal and then, when turned down due to a defect, try to resuscitate parts of the proposal. Just as Crawford did, M&M/Fritz focus on the one defect that affected parts of the proposal that are not involved in the Joint Petitioners' Petition for Partial Reconsideration. In that regard, they assert that the Joint Petitioners tried to take advantage of the cut off procedures and failed. As such, M&M/Fritz contend, the Joint Petitioners cannot complain when the Commission does not later consider the proposed for separate treatment. Neither opponent is sympathetic with the 2 ½ year delay that it took for the Commission to issue a brief 2 ½ page dismissal with almost no discussion.

### DISCUSSION

4. The opponents are wrong when they argue that the Joint Petitioners are asking the Commission to grant their proposal. The Joint Petitioners are only asking that the Commission issue a Notice of Proposed Rule Making along with all of the conflicting proposals Crawford and

anyone else have filed or wish to file. The Joint Petitioners merely want to have their proposal, which has no technical or legal defects, considered by the Commission.

5. The opponents are also wrong when they state that the Joint Petitioners filed as part of a larger counterproposal and now that it has been dismissed due to a defect, the Joint Petitioners want to be considered separately. It was the Commission itself that split up the Counterproposal and considered the Joint Petitioners' portion separately when ruling that it did not conflict with the original petition. Due to that separate treatment by the Commission, the Joint Petitioners maintain that a new NPRM should have been issued.

6. The issuance of a new NPRM does not give the Joint Petitioners any procedural or substantive advantage as opponents argue. Rather it puts their proposal on the same level playing field as that of anyone else. The opponents do not argue that there is any present defect in the proposal offered by the Joint Petitioners nor do they argue that a new petition could not be filed.<sup>2</sup> So what is the difference? It is the opponents who want to have the advantage. If the Joint Petitioners were required to refile, they could not do so until all the previously filed conflicting proposals (set forth in Exhibit A) are dismissed. Otherwise, the filing would be contingent on the dismissals, which is the same reason for the Joint Petitioners objection to the pending Crawford proposals. If Crawford were to file petitions for reconsideration and applications for review of the dismissals, it would be several years before the Joint Petitioners' proposal could be filed without suffering the same defect that plagues all of Crawford petitions listed in Exhibit A of the Partial Petition for Reconsideration. See, e.g., Benjamin, Texas, 17 FCC Rcd 10994 (2002), Application for Review pending; Mason, Texas, 17 FCC Rcd 11038 (2002), Application for Review pending; Evant, Texas, DA03-1012, released 4/4/03, Application

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<sup>2</sup> Crawford refers to one or more deficiencies which existed in October 2000 when the Counterproposal was filed. But those alleged issues were long since resolved and present no impediment to consideration of the proposal now

for Review pending; and Harper, Texas, Letter of March 27, 2003, Application for Review pending. The pending Crawford petitions were only accepted because the Commission failed to enter the Joint Petitioners' Counterproposal into the Commission's data base for more than a year after it was filed. However, it does not matter that the Opponents thought the Joint Petitioners' Counterproposal was defective. Until it is actually dismissed, any later filed conflicting petition is a contingent filing, and the Commission's policy is that it does not accept contingent rule making petitions. See Pinewood, South Carolina, 5 FCC Rcd 7609 (1980), and Benjamin and Mason, Texas, *supra*.

7. Yet Crawford continues to argue that he is entitled to have his contingent petitions protected. The Commission could not process rule making petitions in an orderly fashion if it were to accept contingent petitions which are filed on the basis that a prior filed proposal may be dismissed. The FM spectrum would be filled with proposals that may not be processed but remain pending, thereby blocking legitimate proposals from being processed. The string of contingent filings would make the Commission's pending backlog completely unmanageable. Yet that is exactly what Crawford is asking of the Commission. When one cuts through all the rhetoric permeating Crawford's Opposition, the issue is simply should the Commission preclude consideration of the Joint Petitioners' proposal by Crawford's contingent filings or should the Commission issue a NPRM which combines all of Crawford's conflicting proposals with the Joint Petitioners' proposal. The Commission's decision should be obvious.

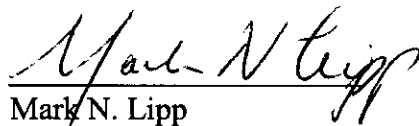
8. If the Commission decides to rule first on the proposals listed in Exhibit A, it should expect to face countless appeals based on Crawford's past practice. See Benjamin and Mason, Texas, *supra*; Evant, Texas, *supra*; and Harper, Texas, *supra*. If the Commission issues a new NPRM, it will eliminate the need to make multiple rulings on these proposals. It will also eliminate the need to reconsider the R&O. More importantly, the Commission should issue the

new NPRM because the public interest is the overriding consideration and the Joint Petitioners' proposal offers compelling public interest benefits. The Joint Petitioners' proposal was filed on October 11, 2000. It is now time for the Commission to consider it on its merits.

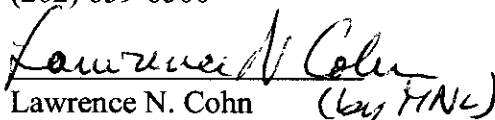
Respectfully submitted,

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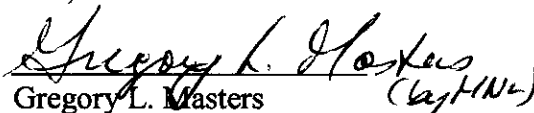
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August 8, 2003

**CERTIFICATE OF SERVICE**

I, Lisa M. Balzer, a secretary in the law firm of Vinson & Elkins, do hereby certify that I have on this 8th day of August, 2003 caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Reply to Oppositions to Partial Petition for Reconsideration" to the following:

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